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Supreme Court of the United States

OCTOBER TERM, 1979

No. 78-1869

DON REHAHN, et al.,
Petitioners,
v.
GENERAL MOTORS CORPORATION and
LOCAL UNION 160, UAW,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS FOR
THE SIXTH CIRCUIT

BRIEF FOR UAW LOCAL 160 IN OPPOSITION

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OPINIONS BELOW

None of the opinions and orders below are officially reported. They are appended to the Petition. (Pet. App. 1-11)

JURISDICTION

The Court of Appeals denied plaintiffs' petition for rehearing on March 19, 1979. Jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

QUESTION PRESENTED

Whether, in the circumstances of this action alleging breach of collective bargaining agreement by the employer and unfair representation by the union, summary judgment was properly granted for the defendants because (1) the claims of the plaintiffs-employees were the subject of final and binding arbitration, (2) plaintiffs failed to exhaust internal union remedies with respect to claims they now raise, (3) plaintiffs failed to demonstrate a genuine issue of material fact as to whether the union acted arbitrarily, discriminatorily or in bad faith, (4) the actions of the local union occurred outside Michigan's three-year statute of limitations period and the international union which handled the arbitration was not joined as a defendant and (5) all but six of the plaintiffs signed a settlement agreement returning them to work and resolving questions concerning their seniority status.

STATUTE INVOLVED

Labor Management Relations Act §301(a), 29 U.S.C. §185(a) (1970):

> (a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

COUNTERSTATEMENT OF THE CASE[1]

Background and Journeyman Status Grievance

All of the Petitioners worked for many years as Template Makers at GM's Fisher Engineering Facility. This classification, as of 1948, was one of five in the combined skilled group classification "Metal Worker-Engineering-Bench and Layout" (MBLO). (Loc. App. 35-36)

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[1] Petitioners' statement of the case contains considerable argument but omits key facts, including all dates of events. Dates are important in light of the statute of limitations defense posited in this case at the outset. Also, Petitioners include few references to the record or appendices below. For the sake of clarity, the joint appendix below will be referred to as "Jt. App." and UAW Local 160's appendix below as "Loc. App." The appendices filed here by Petitioners and General Motors Corporation ("GM" herein) will be denoted "Pet. App." and "GM App.," respectively.

As part of the local contract settlement in March, 1965, Template Makers were given the title "Metal Worker-Template Maker," a non-MBLO classification. New skilled duties were added to the remaining MBLO classifications. (Jt. App. 22; Loc. App. 36)

From 1965 to 1970, the demand for templates decreased, due to GM's greater use of automated numerical control equipment, to the point that many Template Makers were laid off (Jt. App. 225). In the spring of 1970, the Template Makers filed a grievance demanding that they be recognized as part of the MBLO group and "journeymen" as defined by paragraph 178 of the 1967 GM-UAW National Agreement.[2] (Jt. App. 209, 227) Presumably, the Template Makers would then be able to transfer into the MBLO classifications and "bump" employees with less seniority.

The National Agreement specified which steps of the grievance procedure were controlled by Petitioners' local union, Local 160 of the United Automobile, Aerospace and Agricultural Implement Workers of

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[2] Paragraph 178 provided:

The term "journeyman" when used in this Argeement means an employe who: (a) has satisfactorily completed an apprentice training course; or, (b) one who has properly carried such journeyman status in any General Motors plant under the terms of previous agreements between the parties; or, (c) one who has been reclassified as a journeyman under the terms of the Skilled Trades Section of this Agreement; or (d) one newly hired, who meets one of the above alternative requirements or can prove that he has worked in the trade at least equivalent to that on-the-job experience required for reclassification to journeyman status of those employes-in-training covered in Paragraph (167) of this agreement. (Jt. App. 209a; Loc. App. 16, 18)

America (UAW), and which steps were the responsibility of the International Union, UAW. Local 160 processed Petitioners' grievance through all the steps in its control — steps 1 through 3. In June, 1970, the International Union took control of the grievance. It was thereafter responsible for all strategy decisions and prosecuting the grievance, up to and including arbitration if it decided to take the matter that far. Local unions do not control arbitrations under national contracts. Local 160 merely assisted International Representatives in their investigation, preparation and presentation of the grievance.[3] (Loc. App. 2, 9-10, 53-65; Jt. App. 202, 211)

1970 Negotiations And EITS Status

While the grievance was pending, the 1970 local negotiations commenced. Local 160's negotiating team sought some protection for the Template Makers in the form of partial or temporary MBLO status. This was accomplished by designating them "Employees-In-Training with Seniority" (EITS). The local

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[3] Petitioners inexplicably sued only Local 160 and failed to join the International Union as a party. This failure was asserted as a ground for dismissal of the complaint. (Pet. App. 2) Now, Petitioners seek to compensate for this oversight by disingeniously alleging that the International Representative who eventually handled the arbitration was really a local union representative and the International Union did not participate in the arbitration. Petition, pp. 9, 27. Besides being incorrect as a matter of fact and law, Petitioners' assertion, as shown *infra*, is not central to the Court's present inquiry. If anything, the factual uncertainty Petitioners now seek to create mitigates against granting certiorari; the Court would be required to review the evidence and determine this factual matter for itself where the lower courts had no trouble in finding that the International Union handled the arbitration. See *United States v. Johnston*, 268 U.S. 220, 227 (1925).

contract with the EITS provision was ratified in November, 1970. As a result, forty of the forty-four laid off Template Makers were recalled to work and given the wage increase accompanying MBLO status. (Jt. App. 225-226)

Internal Union Appeal

In November, 1970 and April, 1971, Petitioner George Toth wrote to the UAW International Executive Board (IEB) complaining about the refusal of Local 160's bargaining committee and membership to sanction a new grievance. Despite the ratification of the 1970 local contract, Toth wanted to file a grievance asserting that Template Makers held journeyman status for the purpose of transferring into the MBLO group and that they were denied transfer rights under paragraph 59 of the National Agreement.[4] (Jt. App. 183-187)

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[4] Paragraph 59 stated:

Seniority shall be by non-interchangeable occupational groups within departments, groups of departments or plant-wide, as may be negotiated locally in each plant and reduced to writing. It is mutually recognized by the parties that written local seniority agreements are necessary. All local seniority agreements and modifications or supplements thereto shall be reduced to writing and be subject to the approval of the Corporation and the International Union.

When changes in methods, products or policies would otherwise require the permanent laying off of employes, the seniority of the displaced employes shall become plant-wide and they shall be transferred out of the group in line with their seniority to work they are capable of doing, as comparable to the work they have been doing as may be available, at the rate for the job to which they have been transferred. (Loc. App. 15-16)

The IEB concluded that paragraph 59 did apply to the Template Makers and that they ought to be given the transfer rights guaranteed therein. It recommended that Local 160 negotiate with GM to apply that paragraph, but it did not address the issue of whether each Template Maker was qualified as a journeyman under paragraph 178 and could therefore transfer into the MBLO group. Presumably, which jobs the Template Makers were capable of doing would be determined in the negotiations. (Jt. App. 193, 198)

Arbitration

Pursuant to the IEB decision, Local 160 began negotiations with GM. But, it could not exact a compromise. Representatives of the International Union undertook to assist Local 160. They decided that the best way to resolve the matter was to arbitrate the still pending grievance concerning journeyman status. (Jt. App. 226-228; Loc. App. 53)

John Bolin, an International Representative, was assigned to prepare the International's case. He met with all the Template Makers on June 3, 1973, and reviewed the brief he intended to submit. He also reviewed a key strategy decision: not to mention the EITS provision of the 1970 local contract. His reasoning was twofold. The words "in training" in that title might imply that the Template Makers were not already competent to work as journeymen. And, any reclassification won for the Template Makers in the 1970 local negotiations would not shed light on their status under the governing contract, the 1967 National

Agreement. The grievants agreed with this strategy.[5] (Jt. App. 203, 206, 230, 231; Loc. App. 3)

Three days later, the hearing was held before the Impartial Umpire. One of the grievants began to testify about the EITS status. Bolin obtained a recess and reminded him of the strategy. The witness appeared to agree and thereafter testified accordingly. After the hearing, none of the Template Makers expressed dissatisfaction. In fact, several congratulated Bolin. (Jt. App. 206, 232)

On October 30, 1973, the Impartial Umpire determined that paragraph 178 did *not* apply to the Template Makers and they were not entitled to journeyman status or, of course, to transfer into journeymen positions under paragraph 59. (Jt. App. 21 *et seq.*)

Shortly thereafter, GM unilaterally reclassified the Template Makers as "Employees in Training" (EIT), dropping the one year seniority which had accompanied the former designation. Then, it laid off the Template Makers. Local 160 filed a grievance protesting these actions. (Jt. App. 214, 232, 233)

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[5] Petitioners now second-guess Bolin's judgment, asserting expansively that they were persuaded to follow his advice "which worked a fraud on the plaintiffs" and they were not allowed to "bring out all the facts." Petition, pp. 18, 24. But, their prior concurrence in the strategy is *uncontradicted*. It is clear that, for sound reasons, the *only* thing Bolin thought should not be mentioned was the 1970 negotiations resulting in EITS status. The Sixth Circuit noted that the strategy "was fully explained and agreed to by the plaintiffs in attendance." (Pet. App. 10)

1973 Negotiations And Settlement

By this time, the 1973 local negotiations were under way. Several of the Template Makers approached Local 160's Unit Chairman and asked whether the 1970 EITS provision might be incorporated into the 1973 agreement. The Local bargained for this and was successful in securing reinstatement of the EITS status. GM agreed that this would constitute settlement of the pending layoff grievance if the Template Makers would individually sign the agreement. In the summer of 1974, all but six of the Template Makers signelod the agreement and it was ratified by the entire Local membership. All but five of the Template Makers thereafter returned to work. (Jt. App. 215-217, 221, 234)

The Decisions Below

On August 28, 1974, Petitioners sued in the Circuit Court for the County of Wayne, Michigan, complaining that GM refused to recognize their journeyman status and that Local 160 colluded with GM and turned the Umpire hearing into a fraud and a "farce." (Jt. App. 4-12) The action was removed to the District Court which granted summary judgment to the defendants because plaintiffs failed to exhaust their internal union remedies with respect to the complaints about the umpire hearing and because the "bald allegations" of plaintiffs' complaint, briefs and affidavits failed to create a genuine issue of fact as to whether Local 160 acted arbitrarily, discriminatorily, fraudulently or in bad faith. The Court of Appeals affirmed.[6] (Pet. App. 1-11)

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[6] Neither of the lower courts felt it necessary to reach and pass upon the statute of limitations defense asserted by Local 160.

ARGUMENT

The decisions of the lower courts were manifestly correct. There are several independently sufficient grounds for dismissal of the complaint.

The arbitration award bars Petitioners' claims. Petitioners might be able to avoid the binding effect of the award if they could articulate a cogent claim that Local 160 breached its duty of fair representation, but they have not done so. And, the uncontradicted facts establish that they cannot adequately plead such a claim.

Petitioners' failure to even attempt to utilize their internal union remedies with respect to the claim that the arbitration was a "fraud" and a "farce" bars them from presenting such a claim now. This is especially true because the remedies here are demonstrably not futile, inasmuch as they afforded Petitioners relief in an instance *prior* to the arbitration.

Petitioners failed to create a genuine issue of material fact as to the foregoing grounds adopted by the lower courts. Petitioners relied, and still do, on the mere allegations and denials of their pleadings. They also relied on conclusions, opinions and epithets. Summary judgment was therefore proper.

An alternative ground for dismissal, advanced but not reached in the lower courts, is that the action against Local 160 is barred by the applicable statute of limitations. Local 160's control over Petitioners' grievance ended more than three years prior to the filing of this action. The arbitration occurred within

the limitations period, but it was handled by a representative of the International Union, UAW.[7] For reasons known only to Petitioners, the International Union was not joined as a defendant.

Lastly, as Petitioners admit (Petition 10, 28), a large number of them signed a settlement agreement restoring their EITS status and returning them to work, provided they waive grievances and claims about their seniority status *vis-a-vis* journeymen. All but five of the Template Makers returned to work.

Apart from the palpable correctness of the result below, this case does not warrant the grant of *certiorari*. Petitioners have failed to present their case with accuracy, brevity and clearness, and that alone is sufficient reason to deny the petition.

Petitioners have attempted to argue their case only. There is no effort to demonstrate the public importance, recurring nature or larger impact of whatever issues they are trying to advance. This case, in its facts, parties, posture and multitude of defenses, is unique. Because of the many defects in Petitioners' lawsuit, it is doubtful that the issue they perceive to be central would be reached.

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[7] The affidavit submitted below of the International Representative, John Bolin, is appended to this brief as Appendix A. Bolin's description of the grievance and arbitration procedure, his employer, his duties and the arbitration of Petitioners' grievance, including the key strategy decisions, is not contradicted by Petitioners' affidavits. (Pet. App. 20-26)

Contrary to Petitioners' assertion, the holding below does not conflict with the decisions of this Court; it squares with them precisely. Nor did the proceedings depart from the accepted and usual course. The rule on summary judgment was designed for cases like this. There is no conflict among the courts of appeal, and there is no important question of federal law which has not been, but should be, settled by this Court.

The petition for writ of *certiorari* should therefore be denied.

I.

THE DECISION BELOW IS CORRECT. FURTHER REVIEW IS NOT WARRANTED.

A. The Arbitration Is Binding and Bars This Action.

Congress has stated that "[f]inal adjustment by a method agreed upon by the parties is hereby declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective bargaining agreement." Labor Management Relations Act §203(d), 29 U.S.C. §173(d). The national labor policy favors collective bargaining as a means of maintaining industrial peace, and this Court has recognized that the grievance and arbitration machinery is at the heart of this system of industrial self-government. *Steelworkers v. Warrior and Gulf Navigation Co.*, 363 U.S. 574, 578 (1960). These policies "can be effectuated only if the means chosen by the parties for settlement of their differences under a collective bargaining agreement is given full play." *Steelworkers v. American Mfg. Co.*, 363 U.S. 564, 566 (1960). Courts should therefore not usurp the functions

of arbitrators, *id.* at 569, because plenary review by the courts would render meaningless the concept of finality of arbitration, "for it would in reality almost never be final." *Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 598 (1960). If the grievance procedure is not binding and exclusive, it loses its effectiveness and desirability as a method of settlement, and a rule creating an exception to the grievance procedure is a disruptive influence upon both the negotiation of the agreement and its administration. *Republic Steel Corp. v. Maddox*, 379 U.S. 650, 653 (1965).

In balancing these principles and the rights of individual employees, the Court held in *Hines v. Anchor Motor Freight, Inc.*, 424 U.S. 554 (1976), that an employee is bound by an arbitration under a collective bargaining agreement, unless he can bring himself within a narrow exception: Where a union's breach of the duty of fair representation *"seriously undermines* the integrity of the arbitral process," or that process has *"fundamentally malfunctioned* by reason of the bad faith performance of the union" or the "contractual processes have been *seriously flawed* by the union's breach of the duty," an arbitration award is no bar to an employee's suit against his union *and* employer. *Id.* at 567, 569, 570 (emphasis supplied). Establishing that a case falls within this exception "involves more than demonstrating mere errors in judgment" by the union. *Id.* at 571. In *Hines*, evidence which would have established a discharged employee's innocence was not submitted to the arbitrator. It was alleged that with a minimum of investigative effort, the union could have discovered the exculpatory evidence, but it failed to do so. The Court reversed the affirmance of summary judgment for the employer which had relied on the finality of the arbitration. *Id.* at 560-561.

Petitioners attempt to bring themselves within the *Hines* exception. Their complaint about the arbitration comes down to an *ex post facto* disagreement with the strategy of the International Representative concerning testimony. Petition, 8-9, 18. However, a "wide range of reasonableness must be allowed a statutory representative in serving the unit it represents . . . ." *Ford Motor Co. v. Huffman*, 345 U.S. 330, 338 (1953). This discretion is "subject always to complete good faith and honesty of purpose." *Id.* at 338. A union's broad authority in negotiating and administering collective bargaining agreements is "undoubted," but a breach of the duty of fair representation occurs where there is "substantial evidence of fraud, deceitful action or dishonest conduct." *Humphrey v. Moore*, 375 U.S. 335, 338 (1964). Further, a union cannot engage in "discrimination that is intentional, severe; and unrelated to legitimate union objectives," *Motor Coach Employees v. Lockridge*, 403 U.S. 274, 301 (1971), or "arbitrarily ignore a meritorious grievance or process it in a perfunctory fashion." *Vaca v. Sipes*, 386 U.S. 171, 191 (1967). In sum, a "breach of the duty of fair representation occurs *only* when the union's conduct toward a member of the bargaining unit is arbitrary, discriminatory or in bad faith." *Id.* at 190 (emphasis supplied).[8]

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[8] The duty of fair representation is implicit in the National Labor Relations Act, 29 U.S.C. §151 *et seq.*, because it affords unions exclusive power to represent all employees of a bargaining unit. Concomitant with that power is the duty to serve fairly the interests of all in the unit. *See Steele v. Louisville & Nashville Ry. Co.*, 323 U.S. 192 (1944); *Vaca*, 386 U.S. at 177.

This case is like *Humphrey v. Moore, supra*. There, less senior employees were laid off. Their grievances were taken to arbitration and the decision was adverse. They sued their union alleging that its representation before the arbitration board was fraudulent, dishonest and in bad faith. This Court reversed the judgment of the state court, finding that there was no breach of the duty of fair representation and that the arbitration decision was "final and binding" despite plaintiffs' conclusory allegations. 375 U.S. at 351.

Here, Petitioners are bound by the arbitration award because, in the words of the District Court, their "complaint, briefs opposing these motions [for summary judgment], and affidavits by two of the Plaintiffs fall short of being proof that the union was arbitrary, acted in bad faith, was deceitful or dishonest, or acted in any way that could be considered fraudulent . . . . Outside of the Plaintiffs' bald allegations that the Defendants acted collusively or fraudulently, little has been established other than the fact that the Plaintiffs disagree with the ruling of the umpire in arbitration." (Pet. App. 4)

Even now, Petitioners rely on the same bald allegations. The petition is singularly uninformative. It is sprinkled with chants of "fraud," "collusion," "farce," "illegal," *etc.* Petition, 8, 9, 17, 18, 20, 27. These incantations do not disclose *facts* which, if proved, would demonstrate the kind of dereliction of duty alleged in *Hines*. Referring to their prior concurrence in Bolin's suggestion not to mention the EITS status, Petitioners lamely allege that they "were persuaded to follow the advice of the local union

representative which worked a fraud upon Plaintiffs." Petition, 18. This kind of difference of opinion in strategy, coming as it does "[s]ubsequently and considering the matter further," in the words of Petitioner Casey's affidavit (Pet. App. 21), is patently unlike *Hines*. Moreover, even if in retrospect Bolin's judgment was in error (but it was not), Petitioners have no claim. 424 U.S. at 571.[9]

Petitioners' reliance on *Hines* is misplaced, and the arbitration bars this action.

B. The Failure To Exhaust Internal Union Remedies Bars This Action.

Over three years *prior* to the arbitration complained of, an internal complaint was filed and the IEB granted relief. It ordered that Local 160 attempt to negotiate transfers for the Template Makers. But, it is uncontradicted that Petitioners never raised internally the complaint they now assert — that the arbitration was a fraud. (Affidavit of William J. Beckham, GM App. 9-11).

Petitioners allege no conflict among the circuits on the requirement that members exhaust their internal union remedies before suing their unions for breach of the duty of fair representation. Indeed, there is no such

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[9] Petitioners also rely on dark inferences they would have the Court draw from an alleged statement by a Local 160 representative to the effect that if he had agreed with their position, the arbitration would have been won. Petition, 24. This after-the-fact braggadocio does not amount to proof that Bolin failed to fairly represent the Template Makers in the arbitration or that he committed fraud or colluded with GM. It merely serves to reinforce the fact that the Local did not control the arbitration.

conflict. *E.g., Newgent v. Modine Mfg. Co. and UAW*, 495 F.2d 919 (7th Cir. 1974); *Imel v. Zohn Mfg. Co.*, 481 F.2d 181 (10th Cir. 1973), *cert. denied*, 415 U.S. 915 (1974); *Bsharah v. Eltra Corp. and UAW*, 394 F.2d 502 (6th Cir. 1968); *Brady v. Transworld Airlines, Inc.*, 401 F.2d 87 (3rd Cir. 1968), *cert. denied*, 393 U.S. 1048 (1969); *Edsberg v. Operating Engineers Local 12*, 300 F.2d 785 (9th Cir. 1962); *Parks v. IBEW*, 314 F.2d 886 (4th Cir. 1963), *cert. denied*, 372 U.S. 976 (1963); *Gainey v. Bhd. of Ry. & Steamship Clerks*, 275 F.2d 342 (3rd Cir. 1960), *cert. denied*, 363 U.S. 811 (1960); *Anson v. Hiram Walker & Sons*, 222 F.2d 100 (7th Cir. 1955), *cert. denied*, 350 U.S. 840 (1955).

Specifically, the UAW internal remedies are wholly adequate and have been lauded as such. *See, e.g., Newgent; Parks*, both *supra*. A UAW member feeling aggrieved by some action of a local or international officer may appeal to the International Executive Board. If still dissatisfied, he may appeal to the independent Public Review Board or to the UAW Constitutional Convention Appeals Committee. (GM App. 9, 10).

This is not a case like *Glover v. St. Louis-San Francisco Ry. Co.*, 393 U.S. 324 (1969), where it was credibly alleged that exhaustion of internal union remedies would be futile. In *Glover*, the Court acknowledged and affirmed the exhaustion requirement but held that the futility exception applied there. *Id.* at 329, 330. Here, the record establishes that in the only instance in which Petitioners sought relief, the internal tribunal, the IEB, was responsive.

Hence, the Court of Appeals was correct in affirming summary judgment for Local 160 on this ground. (Pet. App. 10)

C. Summary Judgment Was Proper.

Local 160 filed a motion to dismiss or for summary judgment along with four affidavits and several exhibits. Petitioners responded with affidavits and several exhibits. The District Court treated the motion as one for summary judgment because matters outside the pleadings were presented and considered (Pet. App. 1). Fed. R. Civ. P. 12(b). Examining all of the material filed by Petitioners, both lower courts found nothing factual tending to show fraud or collusion. Mere conclusions and bald allegations, rightly enough, were held to be insufficient. (Pet. App. 3-4, 10)

Petitioners argue that the "allegations of the complaint must be accepted as true for the purpose of a motion for summary judgment" and that the Court of Appeals erred in "completely ignoring the allegations of Plaintiffs' complaint." Petition, 18, 26. They further asert that they were not required to "set forth testimony which would or could be presented through witnesses in depositions and discovery and upon trial." Petition, 19.

Petitioners grievously misconstrue the rule. In opposing a motion for summary judgment, a party "may not rest upon the *mere allegation or denials* of his pleadings, but his response, by affidavits or as otherwise provided in this rule, must set forth *specific facts* showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e) (emphasis supplied). Further, the facts must be set forth on "personal knowledge." If a party does not so respond, summary judgment "shall" be entered against him. *Ibid.*

The cases cited by Petitioners themselves establish that the courts must go beyond the complaint in resolving a motion for summary judgment. They quote *Poller v. Columbia Broadcasting System,* 368 U.S. 464, 468 (1962), for the proposition that "[s]ummary judgment should be entered only when the pleadings, depositions, affidavits and admissions filed in the case 'show that [except as to the amount of damages] there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law' . . . ." Petition, 15. Another case cited by Petitioners, *Jenkins v. McKeithen,* 395 U.S. 411 (1969), states that allegations of a complaint are taken as true only on a motion to dismiss.

Thus, Petitioners may not rely on mere allegations and conclusions. They do anyway. They say, "[T]he facts and circumstances lead to the ineluctable *conclusion* that there was collusion and concert of actions between the defendants." Petition, 20 (emphasis supplied). Their affidavits do not set forth specific facts. They rely on, of all things, opinion: "He [Petitioner Casey] is of the *opinion,* and asserts as a fact, that this procedure was part of the collusive behavior of the defendants . . . ." (Pet. App. 21, emphasis supplied.)[10]

The lower courts correctly determined, therefore, that Petitioners failed to meet the standard for successfully opposing a motion for summary judgment. The record is clear that Local 160 made repeated and substantially

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[10] Petitioners rely too on allegations of "fraud" and "farce." As Mr. Chief Justice Stone observed in another context, epithets such as these disclose nothing. *Snowden v. Hughes,* 321 U.S. 1, 10 (1943).

fruitful efforts over many years to represent the Template Makers in their confrontation with technological change. The Local did not act arbitrarily, discriminatorily or in bad faith. It did not control the arbitration but, in any event, there was no such conduct in that instance, either, and no basis for setting aside the award. Moreover, there was no genuine issue of material fact regarding the failure to exhaust internal remedies.

Affirmance of the summary judgment on these grounds was therefore proper.

D. The Statute Of Limitations Bars This Action.

Although federal law governs an action under Section 301 of the Labor Management Relations Act, 29 U.S.C. §185, against an employer for breach of collective bargaining agreement and a union for unfair representation, the timeliness of such an action is to be determined, as a matter of law, by reference to the appropriate state statute of limitations. *International Union v. Hoosier Cardinal Corp.*, 383 U.S. 696 (1966).

In Michigan, allegations of unfair representation are treated as a tort and, as such, are held to be subject to the three-year limitations period of Section 5805(7) of the Michigan Revised Judicature Act, Mich. Comp. Laws §600.5805(7).[11] *Washington v. Chrysler Corp.*, 68 Mich. App. 374 (1976); *Glowacki v. Motor Wheel Corp.*, 67 Mich. App. 448 (1976); *Field v. UAW Local 652*, 6 Mich. App. 140 (1967); *Kennedy v. Local 38, Brewery Workers*, 3 Mich. App. 700 (1966). The lower federal

[11] This part of the statute is set forth as Appendix B to this brief.

courts have consistently applied this statute in fair representation actions.[12]

Here, the sole union defendant is Local 160. The grievance passed out of its control in June, 1970. Its only action during the three years prior to the filing of the complaint in August, 1974 was to negotiate reinstatement of the EITS status for Template Makers, which resulted in their return to work from layoffs. Petitioners understandably do not complain about their return to work in the summer of 1974.

The focal point of Petitioners' complaint is the arbitration in June, 1973. But, there is no *genuine* issue regarding the fact that, as the Sixth Circuit noted, "[t]he International Union, which was not made a party to this case, processed the arbitration." (Pet. App. 10) Petitioners point to nothing in the record or their own affidavits (Pet. App. 20-26) to contradict the affidavit of International Representative Bolin to the effect that the "International Union . . . solely controls presentation of the Union's position before the Umpire . . . ." (App. A, 2) Petitioners do not and cannot allege an actual agency relationship wherein the International was merely an agent for the Local.

Nor do Petitioners allege that Local 160 is vicariously liable for the actions of the International Union in the arbitration. It would be unavailing for them to do so. This Court has recognized the autonomous nature of local unions and their international organizations. *See Mine Workers v. Coronado Coal Co.*, 259 U.S. 344, 393-396 (1922).

[12] *E.g., Pesola v. Inland Tool and Mfg. Co.*, 423 F. Supp. 30 (E.D. Mich. 1976); *Smart v. Ellis Trucking Co.*, 409 F. Supp. 129 (E.D. Mich. 1976); *Williams v. Dana Corp.*, 54 F.R.D. 473 (E.D. Mich. 1971).

Therefore, the statute of limitations bars the complaint against Local 160. Petitioners have managed to sue the wrong defendant regarding the arbitration. The decision below was correct on this alternative ground.

E. The Grievance Settlement Bars This Action

It is undisputed that after the arbitration was lost and GM again laid off the Template Makers, a new grievance was filed seeking their reinstatement. In settlement of the grievance, it was agreed that the EITS provision of the 1970 contract would be reinstated in the 1973 contract, and the Template Makers would be returned to work in the EITS classification. Further, GM required that Template Makers individually sign the settlement agreement. All except six signed the agreement and all but five returned to work under the settlement.

Petitioners seek to avoid the settlement and their acceptance of benefits thereunder by asserting, "All of the Plaintiffs did not agree so there was no valid agreement." Petition, 10. Petitioners cite no authority for their argument, and they do not elaborate.

For the same policy reasons set forth in Argument I-A above with respect to arbitration awards, a grievance settlement is binding unless an employee adequately pleads and proves a breach of the duty of fair representation. *Vaca*, 386 U.S. at 191. As demonstrated, no such breach is adequately pleaded here, especially with respect to the 1974 grievance settlement. The settlement has been adopted, embraced and fully utilized. It has not been attacked. Nor could it be attacked in this litigation, because the internal remedies were not invoked with respect to any complaint

Petitioners might make now about the settlement. See Argument I-B, *supra*.

Because Petitioners are bound by the grievance settlement which, as the Sixth Circuit found, "resolved questions with respect to their classification and seniority status" (Pet. App. 11), Petitioners may not maintain this action to obtain a different classification and status.

For this reason, and all the reasons set forth above, affirmance of summary judgment for the defendants was correct and further review is not warranted.

II.

THIS CASE IS NOT WORTHY OF REVIEW ON CERTIORARI.

To decide this matter, the Court needs only to refer to Supreme Court Rule 23.4: "The failure of a petitioner to present with accuracy, brevity, and clearness whatever is essential to a ready and adequate understanding of the points requiring consideration will be sufficient reason for denying his petition." The inadequacy of the petition in this regard is evident at first reading. The particulars will not be belabored.

The argument (Petition, 11) that the result in the lower courts is in conflict with *Hines v. Anchor Motor Freight, Inc.*, 424 U.S. 554 (1976), had been shown to be without merit. The claim that the proceedings in this case have departed from the accepted and usual course is equally groundless. The grant of summary judgment was not unusual. In fact, on this record, it was mandatory.

It is alleged, but nowhere supported, that the decision of the Court of Appeals conflicts with decisions in other circuits. Petition, 11. No such conflict is identified, and none exists.

The petition presents no important, unsettled question of federal law. The Court has provided ample guidance. No special or important reasons for granting the writ of certiorari are amplified in the petition. On the contrary, while this case may not be unique in terms of the underlying problem — coping with the effects of automation, it is unique in its posture. The wrong defendant has been named, and it has a number of dispositive defenses, both procedural and substantive.

Thus, even if Petitioners believe that misapplication of *Hines* by the circuit courts is the key issue, this case could be decided on other grounds and the issue never reached. Even if there is some issue of public importance lurking in the petition, it is posed, at best, abstractly, and this case is not meaningful litigation for resolution of such an issue. *SS Monrosa v. Carbon Black Export*, 359 U.S. 180, 184 (1959). Certiorari is therefore not warranted.

CONCLUSION

The Court should therefore deny the petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit.

Respectfully submitted,

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August 6, 1979

APPENDIX A

AFFIDAVIT BY JOHN BOLIN

(United States District Court
Eastern District of Michigan)

(Filed November 1, 1974)

STATE OF MICHIGAN
COUNTY OF WAYNE—ss.

John Bolin, being first duly sworn, deposes and says as follows:

I am an International Representative of the International Union, UAW. I am authorized to make this Affidavit.

I am assigned to the General Motors Department of the International Union, UAW. I have been in the UAW GM Department, primarily assigned to the UAW's GM Umpire work since 1962. I have been an International Representative since 1955. In my capacity as an International Representative between 1955 and 1962, I also did some arbitration work in which I presented the Union's position in regard to various grievances.

Under the Grievance and Umpire Procedure of the General Motors Corporation-UAW National Agreement, if the grievances are not adjusted at the Local Union level, in Step 3 they reach the control of the International Union. This procedure is spelled out in detail in Paragraph (37) of the December 15, 1967 Agreement between GM and the UAW. I attach a copy of this Agreement to my Affidavit. The Grievance and Umpire Procedure in the 1970 Agreement was

substantially the same. I also attach a copy of the 1970 Agreement. When a grievance reaches the level of Step 3, where it comes under control of the International Union, the UAW Regional Director and the Director of the General Motors Department assign members of their staffs to the case.

Local Unions no longer control the processing of grievances after they reach the International Union in Step 3. Of course, Local Union representatives usually continue to have contact with grievances through their advising and consulting with International Union representatives.

I am familiar with the case involving the Template Makers employed at the General Motors Technical Center and represented by UAW Local 160. The records of the General Motors Department of the UAW indicate that grievances involving the Template Makers reached the International Union General Motors Department in the Spring of 1970. The International Union, through its GM Department and its Region 1, solely controlled the Template Makers' grievance from and after that date. UAW Local 160 did not control said grievance from and after the Spring of 1970.

The Umpire procedure is described in Step 4 of the attached National Agreements between GM and the UAW. The International Union, through its Regional Office and through the GM Department of the UAW Umpire Staff solely controls presentation of the Union's position before the Umpire both in cases involving individual grievances and in cases involving policy grievances. In other words, Local Unions do not control the presentation of the Union's case before the Umpire. More specifically, UAW Local 160 did not control the

presentation of the grievance involving the Template Makers in the Umpire procedure. Of course, we consult with and hear the advice of Local Union representatives.

The Umpire staff of the General Motors Department of the UAW elected in its discretion to take this case to arbitration before the Umpire. I had been assigned to prepare this case by the GM Department of the UAW in late December 1972. I investigated the case. This included going to the plant and meeting individually with every one of the grievants, that is every Template Maker involved. It was my determination that this case should be returned to the Third Step level, so that additional evidence which I regarded as beneficial to the grievants and material to the case could be put in at that Step.

Two Third Step meetings in regard to the grievance were held in March, 1973. Appearing for the International Union at the Third Step meetings were me and Region 1 representative Frank Meloche. Joe Malotke, Eddie Rymal and N. Corniuk appeared for Local 160. At that step, I introduced additional documents and evidence, which I believed would help the case of the grievants. Nevertheless, in spite of our presentation, General Motors management stuck to its former position and refused to grant our grievance.

Accordingly, the International Union appealed the case to the Umpire. On or about June 3, 1973, prior to the Umpire hearing, I met with all of the Template Makers involved at the Region 1 headquarters of the UAW, which is located at 12000 East 12 Mile Road in Warren, Michigan. At that time, the Template Makers and I and other UAW representatives again reviewed

the individual Template Makers' qualifications, work history and any other pertinent facts which the Template Makers believed necessary to successfully pursue their case. In addition to reviewing their individual situations, which I had included in the brief which I was going to submit to the Umpire, I essentially presented to the Template Makers the position which I was going to present to the Umpire. At the meeting with the Template Makers on June 3, I read them my entire brief. I did not read them all parts of the history of the case, but that was available at that meeting. Attached is a copy of the Union's brief, with attachments to it involving the history of the case and other matters. At the conclusion of this meeting, some of the Template Makers in attendance expressed the opinion that the International had prepared a good case and that the case should be presented as we had proposed. To the best of my recollection, no Template Maker or anyone else at the meeting objected to the brief or to the manner in which I proposed to present the case to the Umpire. At this meeting, the Template Makers selected George Toth, Howard Casey and Leldon Bartlett to be representative witnesses for the Template Makers at the Umpire hearing. It is possible, though I am not certain about this, that Brother Farmer was also selected as a representative.

On June 5, 1973, the Umpire hearing was held before GM-UAW Umpire Rolf Valtin. Appearing on behalf of the grievants at the Umpire hearing, in addition to myself, were the following persons: Frank Meloche and Rudy Pale of the GM Department of the International Union, UAW. Present for Local 160 were Joe Malotke, the Chairman of the Fisher Body Engineering Unit of Local 160, and Local 160 Fisher Engineering Unit Shop

Committee members Eddie Rymal and N. Corniuk. In addition, individual Template Makers were present; these included, to my best recollection, George Toth, Howard Casey, Leldon Bartlett and George Farmer.

The main issue before the Umpire was the grieving Template Makers' demand that they be recognized as "journeymen" in the Metal worker engineering Bench and Layout (M.B.L.O.) skilled classification. The Template Makers had been seeking to be recognized as journeymen in said classification pursuant to Paragraph (178) item (b) of the 1967 National Agreement. (at page 115) If we had won the Umpire decision and the Template Makers would have been recognized as journeymen in the M.B.L.O. group; then under Paragraph (59) of the National Agreement, they could have bumped into that classification by taking with them their entire previous journeymen seniority. M.B.L.O. journeymen, with less seniority, could have been bumped out.

At the hearing, I presented the Union's brief to the Umpire as well as the attachments. The Union's brief and attachments are attached to my affidavit. The brief, which I presented the Umpire, was the same as the brief which all the Template Makers had approved two days earlier. I called the Union witnesses and they were subject to the cross examination by General Motors representatives, as well as any questions which the Umpire might have for them. Although the Umpire and various of the parties made their own notes, this hearing was not transcribed by an official reporter. At that time, very few Umpire proceedings were officially transcribed; and to my knowledge, none of them were transcribed where GM cases were involved.

At the June 3 meeting, it had been discussed between me and the Template Makers as to whether or not I should bring out the fact that the Template Makers had been reclassified in 1970 as EITS, which stands for Employees In Training with Seniority. It was my opinion, which I expressed at that June 3 meeting, that such information would hurt the Template Makers' claim that they were journeymen in the engineering M.B.L.O. classification, because that journeyman classification was higher than EITS. In other words, if the Umpire had realized that these claimants had been put in EITS, this would have them appeared less skilled and undermined their claim for the M.B.L.O. journeyman status. Furthermore, the grievance in question arose under the 1967 Agreement; thus, the 1970 EITS agreement was irrelevant. The Template Makers agreed with me at that June 3 meeting that this issue would not be raised.

During the Umpire hearing, one of the Template Makers, I believe it was George Toth but I am not certain, began to mention the 1970 Agreement which led to their EITS status. I called a recess. When we were in recess, I reminded the Template Maker about our meeting and understanding of June 3 and again expressed my opinion that his going into the EITS agreement would weaken our case before the Umpire. I think he said "okay." In any event, when he resumed testifying, he did not mention the EITS status anymore. If he had gone into it again, I would not have been in a physical position to stop him. In no other respect, to the best of my recollection and knowledge, did I discourage the Template Makers from testifying to anything they wanted to. None of the Template Makers

indicated to me during or after the hearing, apart from the one described incident, that he wanted to say anything else that was not said.

I presented the Union's argument to the best of my ability. I believe that the Union's position was correct and that the grievants were right. I did not collude with General Motors representatives or with the Umpire to cause a result, where the case would go against the Union in favor of General Motors. In my representation of the grievants when the case was at the GM Department of UAW level, including the Umpire proceedings, I acted in good faith and without hostility toward any of the grievants. I did not discriminate against any of the grievants but treated them the same way I would treat other Union members whom I was representing and whom I had represented in the past.

After the Umpire hearing was held, several of the Template Makers present at the hearing approached me and, to the best of my recollection, told me that I had done a credible job and that they were satisfied with the way I had presented the case. No Template Maker, who was present at the hearing, objected to the way I had presented the case. I do not remember the exact names of the Template Makers who came up to me after the hearing.

We received the Umpire decision on or about November 13, 1973. A copy of that decision is attached. The decision denied the grievance. I was very disappointed. To my recollection, I did not deal with the matter or represent any of the claimants in connection with that grievance, after the Umpire decision.

The above statements in my affidavit are made of my own personal knowledge, though my memory has been refreshed from examining some of the records under my control, including the attachments to my Umpire brief. I would be competent to testify to these matters in a court.

FURTHER, affiant sayeth not.

/s/ JOHN D. BOLIN

Subscribed and sworn to before me,
a Notary Public in and for the County
of Wayne, State of Michigan, this
30th day of October, 1974.

/s/ Elizabeth Pilot

My Commission expires 10-16-76.

APPENDIX B

Michigan Revised Judicature Act, Section 5805

Mich. Comp. Laws §600.5805

Section 5805. No person may bring or maintain any action to recover damages for injuries to persons or property unless, after the claim first accrued to himself or to someone through whom he claims, he commences the action within the periods of time prescribed by this section.

* * *

(7) The period of limitations is 3 years for all other actions to recover damages for injuries to persons and property.